

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

<b>MICHAEL DURHAM,</b>	:	
	:	
Petitioner,	:	
	:	
v.	:	Civ. Act. No. 07-370-***
	:	
<b>THOMAS CARROLL</b> , Warden,	:	
and <b>JOSEPH R. BIDEN, III</b> , Attorney	:	
General of the State of Delaware,	:	
	:	
Respondents.	:	

**MOTION FOR EXTENSION OF TIME**

Pursuant to Rule 6 of the Federal Rules of Civil Procedure, respondents move for an extension of time in which to file an answer to the petition. In support thereof, respondents state the following:

1. The petitioner, Michael Durham, has applied for federal habeas relief, filing a habeas petition challenging his 2003 conviction and sentence for first degree burglary, first degree attempted robbery, and a variety of firearms and other charges. D.I. 1. By the terms of the Court's order, the answer is due to be filed on September 7, 2007. D.I. 8.

2. Counsel has been, and continues to be, diligently working on numerous cases before this Court and the state courts. However, the workload for the Appeals Division attorneys is currently very substantial. Counsel is currently assigned to several first degree murder cases in various stages of postconviction litigation. In addition to her regular caseload, counsel is also involved in the federal class action litigation regarding the lethal injection procedures in Delaware which is scheduled for a week-long trial in early October. In light of the situation, additional time is needed to complete the answer and have it reviewed in the ordinary course of business.

3. Under Habeas Rule 4, the Court has the discretion to give respondents an extension of time exceeding the 40-day limit in Civil Rule 81(a)(2). *Clutchette v. Rushen*, 770 F.2d 1469, 1473-74 & n.4 (9<sup>th</sup> Cir. 1985); *Kramer v. Jenkins*, 108 F.R.D. 429, 431-32 (N.D. Ill. 1985). The comment to Rule 4 expressly states that the district court has "the discretion to take into account various factors such as the respondent's workload" in determining the period of time that should be allowed to answer the petition.

4. This is respondents' first request for an extension of time in this case.

5. Respondents submit that an extension of time to and including November 2, 2007, in which to file an answer is reasonable. Respondents submit herewith a proposed order.

/s/ Elizabeth R. McFarlan  
Deputy Attorney General  
Department of Justice  
820 N. French Street  
Wilmington, DE 19801  
(302) 577-8500  
Del. Bar. ID No. 3759

DATE: September 6, 2007

**RULE 7.1.1 CERTIFICATION**

I hereby certify that I have neither sought nor obtained the consent of the petitioner, who is in the custody of the Delaware Department of Correction and appearing *pro se*, to the subject matter of this motion.

/s/ Elizabeth R. McFarlan  
Deputy Attorney General

Counsel for Respondents

Date: September 6, 2007

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<b>THOMAS CARROLL,</b> Warden,	:	
and <b>JOSEPH R. BIDEN, III,</b> Attorney	:	
General of the State of Delaware,	:	
	:	
Respondents.	:	

**ORDER**

This \_\_\_\_ day of \_\_\_\_\_, 2007,

WHEREAS, respondents having requested an extension of time in which to file an answer,  
and

WHEREAS, it appearing to the Court that the requested extension is timely made and good  
cause has been shown for the extension,

IT IS HEREBY ORDERED that respondents' answer shall be filed on or before November 2,  
2007.

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United States District Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on September 6, 2007, I electronically filed a motion for extension of time with the Clerk of Court using CM/ECF. I also hereby certify that on September 6, 2007, I have mailed by United States Postal Service, the same document to the following non-registered participant:

Michael Durham  
SBI No. 161286  
Delaware Correctional Center  
1181 Paddock Road  
Smyrna, DE 19977

/s/ Elizabeth R. McFarlan  
Deputy Attorney General  
Department of Justice  
820 N. French Street  
Wilmington, DE 19801  
(302) 577-8500  
Del. Bar. ID No. 3759  
elizabeth.mcfarlan@state.de.us